IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)
Description of Case

SA No. 885 of 2001
(Old No. 1348 of 1977)

Dated of decision:- 20-7-2006

~~A.F.R. (Approved for Reporting)~~
~~Not approved for reporting~~

Date:- 20-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL

AT NAINITAL

Second Appeal No. 885 of 2001
{Old No. 1348 of 1977}

1. Sri Dhan Singh S/o Sri Chhidda Baghaban
2. Smt. Phoolwati W/o Sri Dhan Singh
   Both R/o Kashipur, Mohalla
   Maheshpura, Tehsil Kashipur
   District Nainital
3. Smt. Ram Dei W/o Sri Natthu Kumar
   R/o village Bahadurganj, Tehsil Bazpur
   District Nainital {deceased} ….Appellants

Versus

1. Sri Haria- (deceased)
1/1 Vijay
1/2 Kishori
1/3 Prakash
2. Sri Punna S/o Sri Budhseni
3. Sri Pyare Lal (deceased)
3/1 Kailasho
   All R/o Maheshpura, Tehsil Kashipur
   District Nainital ……. Respondents

Mr. Sarvesh Agarwal learned counsel for the appellants.
Sri Gopal K. Verma learned counsel for the respondents.

Hon'ble J.C.S. Rawat, J.

1. The second appeal has been filed under section 100 C.P.C. against the judgment and order dated 25.4.1977 passed by the District Judge, Nainital in Civil Appeal No. 1/1977 dismissing the appeal and confirming the judgment & decree dated 23.12.1976 passed by the learned Munsif, Kashipur in Suit No. 255/1974.

2. Brief facts of the case are that the plaintiffs (hereinafter referred as 'respondents') filed a suit for ejectment of the defendants (hereinafter referred as 'appellants') from the disputed house with the

allegations that the appellants were temporary given the disputed house on licence three years before the filing of the suit. The appellant no.2-Smt. Phoolwati w/o Dhan Singh is the sister of the plaintiffs. It was further alleged that the appellants had been living in the disputed house since they were allowed to live. The appellants were earlier living at Dron Sagar from where they were evicted. Thereafter, the appellants requested the plaintiffs to permit them to live in the disputed house till the other arrangement is made. When the appellants did not vacate the house in question inspite of repeated requests of the respondents, the respondents-plaintiffs served a notice to the defendants to vacate the said premises within a period of fifteen days. Inspite of the service of notice, the appellants did not vacate the said house. Hence, the suit was field for ejectment of the appellants.

3. The suit was contested by the appellants (defendants) and they pleaded that the real sister of the plaintiffs Smt. Ram Die (appellant no. 3), who was impleaded in the suit after filing of the written statement, was the owner of the disputed house and she gave it to her younger sister-appellant no.2(Smt. Phoolwati) for life time. It was further alleged that the suit was barred by the principle of estoppel and acquiescence. It was further alleged that panchayat was convened to settle the dispute and the panchayat had held that the property should remain with the appellants.

4. After the appraisal of the pleadings, the learned Munsif framed the necessary issues in the suit and came to the conclusion that the plaintiffs-respondents are the owners of the disputed property and the appellant no.1 & 2 were held to be the licencees in the said house. It was further held that the licence was revoked by the respondents by means of a notice and contention of the appellants that the suit was barred by the principle of estoppel and acquiescence was rejected.

5. Feeling aggrieved by the said judgment and decree passed by the learned Munsif, an appeal was preferred before the District Judge. The District Judge has dismissed the appeal and confirmed the findings recorded by the trial court and the maintained the decree passed by the trial court vide order dated 25.4.1977.

6. Feeling aggrieved by both orders of the courts below, the second appeal was preferred before the Allahabad High Court from where it has been received by transfer under the U.P. Reorganization Act, 2000, for its disposal.

7. On 19.07.2006, this Court has framed the following substantial questions of law for consideration:-

(i) Whether the suit requiring the appellants to vacate the premises was

wrongly filed on the regular side instead of the Small Cause Courts Judge."

(ii) *"Whether the fifteen days notice dated 26.02.1974 requiring the appellants to quit was in violation of the mandatory requirement of one month's notice and as such the whole suit is bad for non-compliance of the mandatory requirement."*

(iii) *"Whether the courts below were justified in ignoring the arbitration award on the ground that it was not written on stamp paper."*

8. So far as the question no.1 as mentioned above is concerned it was contended on behalf of the appellants that the respondents-plaintiffs had filed a regular suit for the ejectment of the appellants. It was contended that the respondents should have field the suit before the judge Small Causes Court and the suit was not maintainable before the court of learned Munsif. Learned counsel for the respondents refuted the contention. It is pertinent to mention here that he suits cognizable by the Judge Small Cause Court are those suits, which have been filed by the landlord against the tenant on the basis of the lease. The suits filed by the licensor against the licencee is not cognizable by the Judge Small Causes Court. The suit in hand had been filed before the regular court on the ground that the appellants-

defendants were the licenceee of the premises and it was not based on the ground of lease of the disputed property. Thus, the suit against the licencee is maintainable in the civil court. Therefore, in view of the above discussion, the question no.1 answered in favour of the plaintiffs.

9. So Far as the substantial question of law no.2 is concerned, the learned counsel for the appellants contended that the notice upon the appellants to quit the disputed house within fifteen days was in violation of the mandatory provisions of section 106 of the Transfer of Property Act. Learned counsel for the respondents refuted the contention. It is pertinent to mention here that the plaint has been filed on the basis of the relationship of the parties as licencee and the licensor. Section 106 of the Transfer of Property Act is only applicable when the suit is brought on the ground that there was a lease agreement either oral or written. In that case the provisions of section 106 of the Transfer of Property Act would be attracted and 30 days notice under section 106 of the Transfer of Property Act is required to quit the said accommodation. To revoke the licence of the defendants(tenant), no notice under section 106 of the Transfer of property Act is required. Thus, the notice to vacate the house in question within fifteen days is not invalid and I hold that the notice requiring to vacate the disputed house within fifteen days is legal. Therefore, in view

of the above discussion, the question no.2 is answered accordingly.

10. So far as the question no.3 is concerned, it is admitted to the appellants that the panchayat was convened to settle the dispute and a document was executed which is paper no.48ka on record. It is admitted to the appellants that the said document had not been proved in evidence. It was contended on behalf of the appellants that the said document confers the right upon the appellant no.2 to live in the disputed house for the life time. The learned counsel for the respondents-plaintiffs refuted the contention and contended that the said document had not been proved before the trial court. It was further contended on behalf of the plaintiffs that the said document does not contain the signature of the respondents-plaintiffs and the said document cannot be read in evidence against the plaintiffs. It was further contended that the plaintiffs never allowed convening any panchayat and they were never a party in the arbitration. He further contended that there was no agreement in writing between the parties to refer the matter to the arbitration. It was further contended that Prannu had stated that he was the 'Punch' in the said case and his signature was not on the award. Learned counsel for the respondents further contended that the plaintiffs acquired the rights and title over the property by way of a sale deed. The said document extinguishes the right and title of the plaintiffs and it confers a

right and title upon the defendant no.3. It is a deed of transfer and it extinguishes the right of the plaintiffs. As such, this document requires the registration under section 17 read with 49 of the Registration Act. Perusal of the record reveals that it extinguished the right of the plaintiffs and conferred the title upon the defendant no.3. There are catena of decisions of the Hon'ble Supreme Court that if the rights of any party are created by extinguishing the right of the transfer even by way of any document that requires registration. **{See in Bhoop Singh Vs. Ram Singh major AIR 1996 Sc 196}.** Apart this, it is admitted to the parties that such document had not been written on any stamp papers. It is admitted to the parties that if the arbitration award was given by the arbitrator it must be written on the stamp papers. It is also pertinent to mention here that the plaintiffs had denied that they were party in that arbitration award and the plaintiffs also denied that they agreed to the decision of the arbitrator. Merely saying by the persons, who had signed the document that they are conferring the rights and title upon the defendants-appellants does not create any right upon the defendants. It is also noteworthy that the defendants had taken a case in his written statements that the defendant no.3 was the owner of the disputed property and the defendant no.3 had given a right to reside in it. The appellant no.1 appeared before the court below and stated that the plaintiffs gave the said property to him when he married with their sister-Smt.

Phoolwati. He further stated that the plaintiffs purchased the property by way of a sale deed and the respondents had gifted the said property to the appellants. At one time, the appellants are claiming the property form the defendant no.3 and at the same time the appellants are coming with a case during the course of the evidence that the said property was gifted to them by the plaintiffs-respondents. Two inconsistent pleas have been taken during the course of pleadings and evidence. Apart this, a document (Panchnama) was filed claiming he title of the property. Thus, three inconsistent pleas were taken before the courts below. The plaintiffs not being the party to the panchayat, the said document was not proved in the evidence and the document cannot be read as the evidence due to non-registration. The said document had not been written on the stamp papers. It also leads to take an interference that the said award was not in pursuance of the Arbitration Act and it does not confer the rights and title of the disputed property to the appellants. Therefore, in view of the above discussion, the question no.3 is answered accordingly.

11. I have gone through the judgments & orders of the courts below. Perusal of the impugned judgments reveals that there is no perversity in the appreciation of the evidence. I am completely in agreement with the findings recorded by the trial court as well as by the appellate court.

12. The appeal devoids of merit and is dismissed accordingly. The judgment and order dated 25.4.1977 passed by the District Judge, Nainital in Civil Appeal No.1/1977 and judgment & decree dated 23.12.1976 passed by the learned Munsif, Kashipur in Suit No.255/1974 are confirmed. Therefore, no interference is required with the findings in this case. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 20.7.2006

LSR